

No. 9/5/84-6Lab/8647.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act, No. XIV of 1947) the Governor of Haryana is, pleased to publish the following award of the Presiding Officer Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Nagpal Industries 65/6 Industrial-cum-Housing Estate, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 171/1982

Between

SHRI PHOOL CHAND WORKMAN AND THE MANAGEMENT OF M/S NAGPAL INDUSTRIES, 65/6, INDUSTRIAL-CUM-HOUSING ESTATE, FARIDABAD

*Present :—*Shri Amar Singh Sharma, for the workman.

Shri G.S. Chaudhary, for the management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Phool Chand Workman and the Management of M/s Nagpal Industries, 65/6 Industrial -cum-Housing Estate, Faridabad, to this Tribunal, for adjudication :—

Whether the termination of service of Shri Phool Chand was justified and in order ? If not, to what relief is he entitled ?

Notices were issued to both the parties. The claimant in his claim statement dated 16th June, 1981, alleged that he was employed with the respondent on 1st November, 1978 as Plannerman and was getting Rs. 375 per month and that he did not give any chance of any complaint during his service period. It was further alleged that his services were terminated wrongfully and illegally because he organised the workers of the factory to form a union to settle their demands in a peaceful manner when he was turned out of the factory but was reinstated by the Management due to settlement arrived at before the Conciliation Officer, Faridabad. It is further alleged that the Management wanted to get rid of him by hook and crook and he was again turned out of the factory on 26th June, 1981 and had been victimised by the respondent and further that no charge sheet was issued nor any enquiry was conducted by the Management before terminating his service. It was, therefore, prayed that he be reinstated with full back wages.

3. The Management in their written statement dated 2nd August, 1982 pleaded that the claimant had already taken the amount in full and final settlement of his claim voluntarily from the Management. It was further pleaded that the workman came to the Management on 2nd May, 1981 and moved an application for grant of leave from 10th May, 1981 to 25th May, 1981 and advance of Rs. 500 as he had to attend his brother's marriage. It was further pleaded that leave was sanctioned and advance was paid to him, informing him that if did not report for duty after expiry of leave period his name could be struck off from the register. It was then pleaded that the workman did not join duty and sent his medical certificate from a doctor with effect from 21st May, 1981 to 29th June, 1981 in which it was written that the workman could resume duty on 22nd June, 1981. It was pleaded that the workman did not join duty on 22nd June, 1981 but he came on 26th June, 1981 and requested the management to prepare his full and final account as he did not want to serve the Management and that on his request the management cleared all his dues and had thus left the job of his own free-will.

4. The claimant in his rejoinder dated 30th August, 1982, reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issues were framed on 30th August, 1982 :—

- (1) Whether the workman has received his full and final claim from the Management ? OPM
- (2) Whether the workman was victimised as alleged ? PW.
- (3) Whether the termination of service of Shri Phool Chand was justified and in order ? If not, to what relief is he entitled ? POPM.

6. It may be mentioned that the Management examined four witnesses and documents Ex. M-1 to M-6, MW-3/A, and MW3/1 to MW-3/7 have been tendered into evidence. The workman has appeared in the witness

box as WW-1 and documents EX.W-1 and W-2 have been tendered into evidence. After going through the entire evidence and hearing both the representatives of the parties, my findings on the above issues are as under :—

Issue No. 1 :

7. The Management examined MW-1 Shri Onkar Bhushan Partner of the Management who stated that the claimant proceeded on leave on the basis of the application Ex.M-1 as he had to attend the marriage of his brother and took Rs. 500 as advance. He further stated that after the expiry of leave, the claimant did not turn up and Medical certificate Ex. M-2 was received, according to which the claimant had to join duty on 22nd June, 1981. He also stated that the claimant came on 26th June, 1981 and requested that his accounts be settled because he got employment when Rs. 1,450 were paid to him in full and final settlement of his claim, vide voucher Ex. M-3 and that details of amount were given on the document, Ex. M-3/A. He further stated that vouchers was signed by the claimant and was attested by Shri Kishan Lal. He stated that the conciliation proceedings Ex. M-4 took place and that the case of the claimant was rejected by the Government—vide letter Ex. M.S. MW-2. Shri Kishan Lal stated that on 26th June, 1981 the claimant was paid Rs. 1,450 in full and final settlement of his claim on the basis of the voucher Ex. M-3 which was signed by him and attested by MW-2. He further stated details of amount were given in document Ex. MW-3/A which was signed by the claimant in his presence. MW-3 Shri G.S. Choudhary stated that the original voucher was lost from his record and that he had lodged a report with the police in that respect copy Ex. M-6 MW-4 Shri Bachu Singh Typist of the respondent stated that the entry regarding payment of Rs. 1,450 to the claimant was made in the account books. Copied Ex. MW-3/1 to MW-3/6 and that the copy of the order passed by the assessing authority was Ex. MW-3/7.

8. Shri Phool Chand claimant has appeared as WW-1 and stated that he was employed in the respondent factory on 1st November, 1978 as plannerman at Rs. 375 per month. He further stated that they formed a union of the workmen when he was turned out by the respondent on 15th March, 1980 and that in conciliation proceedings, a settlement was arrived at when he joined duty and thereafter he was got beaten by the management from their men on 13th June, 1981 and that Ex. W-1 was the carbon copy of the medical legal report and Ex. W-2 was the copy of the complaint made by him to the police. He further stated that he never tendered his resignation and proceeded on leave on 10th May, 1981 upto 21st May, 1981 in connection with the marriage of his brother but he fell ill and sent his medical certificate upto 20th June, 1981 and that he came to the factory to join his duty on 22nd June, 1981 and worked there for three days upto 25th June, 1981. He further stated that on 26th June, 1981 he went to the factory and was told to receive the amount and was not taken on duty. He further stated that no enquiry was held against him and that vouchers, EX.M3 and M-3/A did not bear his signature and that he did not receive any amount on the basis of these voucher nor he had made any request in writing for settlement of his accounts and that he was unemployed since then.

9. A perusal of the above evidence would show that the Management plea is that the claimant prayed for settlement of his accounts when he was paid Rs. 1,450 on the basis of voucher Ex. M-3 and that details of said amount were given in the document Ex. M-3/A. The Management has produced MW-1 Shri Onkar Bhushan Partner and MW-2 Shri Kishan Lal Clerk who deposed that the amount of Rs. 1,450 was paid to the claimant in full and final settlement of his claim and that he had affixed his signatures in their presence. The claimant has denied having preceived this amount. He also denied his signatures on this document. The original voucher has not been produced by the Management on the ground that the same has been lost and has examined Shri G.S. Choudhary in that respect, who stated that he reported the matter to the police regarding loss of the voucher. The report to the police copy Ex. M-6 was made on 30th August, 1981. Photo stet copies of the documents were filed on 30th August, 1982, which show that the original documents were possession of the management on 30th August, 1982. Moreover MW-1 Shri Onkar Bhushan Partner of the respondent state these documents were scribed by Shri Madan Lal. The scribe of these documents has not been examined by the Management. Further, MW-1 Shri Onkar Bhushan and MW-2 Shri Kishan Lal are not independent witnesses because Shri Onkar Bhushan was the partner while Shri Kishan Lal was the clerk in that firm. No document has been produced by the Management to show that any request in writing was made by the claimant to settle his accounts. The claimant had come after performing the marriage of his brother and must be in need of money. Consequently, he would not like to leave the job, where he was serving for the last several years. There is no evidence that he got some other employment. The documents Ex. MW-3/A shows that the advance of Rs. 500 was not adjusted. If the accounts of the claimant were being settled finally, the advance of Rs. 500 must have been adjusted by the Management. Moreover the Management has not examined any expert to compare the disputed signature with the specimen signature of the claimant, especially when the claimant had denied having affixed his signatures on this document. Copies of the documents Ex. MW-3/1 to M-3/6 which are entries of amount of advance do not prove actual payment of the sum of Rs. 1,450 to the claimant. The management has thus failed to prove that the workman received Rs. 1,450 in full and final settlement of his claim. In the ruling reported as Andhra Laundry (Proprietor, M.A. Masilamani), Madras and Additional Labour Court, Madras and other, 1968-1-LLJ- page 356, it is laid down that where the workman received the amounts in full and final settlement of his claim, he was estopped from putting forth a claim for the statutory benefits and is deemed to have waived his right. This ruling is distinguishable facts because in the present case, the Management has failed to prove that the claimant took Rs. 1,450 in full and final settlement of his claim the issue is decided accordingly against the Management.

Issue No. 2.

10. There is oral testimony of Shri Phol Chand that they had formed a union but no documentary evidence has been filed in this respect. Medical certificate copy Ex.W-1 and complaint Ex. W-2 do not show that the claimant was given beating being a member of any union. Consequently it cannot be held that the claimant was victimised on the ground that he was a member of the union. The issue is decided accordingly against the claimant.

Issue No. 3.—

11. As discussed in issue No. 1 above, the Management has failed to prove that the claimant received Rs. 1,450 in full and final settlement of his claim. Consequently, the termination of service of the claimant is illegal because the provisions of section 25-F of the Industrial Disputes Act, 1947 have not been complied with. The claimant is, therefore, entitled to reinstatement with full back wages and continuity of services. The award is passed accordingly.

The 21st November, 1984

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 1248, dated the 22nd November, 1984

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section -15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9/5/84-6 Lab/8648—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial-Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Mayorsons Steel Works, Re-roller and Fabricators, Plot No. 19, Sector 6, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 343/1981

Between

SHRI RAJA RAM WORKMAN AND THE MANAGEMENT OF M/S MAYORSONS STEEL WORKS
RE-ROLLER AND FABRICATORS PLOT NO. 19, SECTOR 6, FARIDABAD

Present.—Shri Rajesh Sharma for the Management.

None for the Management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of Section-10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Raja Ram Workman and the management of M/s Mayorsons Steel Works Re-roller and Fabricators Plot No. 19, Sector-6, Faridabad, to this Tribunal, for adjudication:—

Whether the termination of service of Shri Raja Ram was justified and in order? If not, to what relief is he entitled?

Notices were issued to both the parties. The claimant in his claim statement dated 3rd December, 1981 pleaded that he joined the service of the respondent in the year 1970 as helper but this services were terminated arbitrarily and illegally without giving any notice to him and as such he was entitled to reinstatement with full back wages. The Management in their written statement dated 11th February, 1982, pleaded that the reference was maintainable and that the claimant had left the service of the respondent voluntarily by remaining absent from duty with effect from 28th June, 1981 without obtaining prior permission or sanction of leave and that the Management never terminated the services of the claimant.

3. The claimant in his rejoinder dated 25th May, 1982, reiterate the pleas taken in the claim statement.
4. On the pleadings of the parties, the following issues were framed:—
 - (1) Whether the reference is not maintainable ? OPM
 - (2) Whether the workman abandoned his job by remaining absent from duty? OPM.
 - (3) Whether the termination of service of Shri Raja Ram was justified and in order? If not, to what relief is he entitled? OPM
 - (4) Whether the workman has been gainfully employed ? OPM

5. It may be mentioned that the Management examined two witnesses and documents Ex. M-1 to M-3 were tendered into evidence. On 18th October, 1984 none appeared on behalf of the workman and as such *ex parte* proceedings were ordered against him. After hearing the representative of the management and going through the evidence led by the management, my findings on the above issues are as under:—

Issue No. 1 :

6. No evidence has been led by the management on this issue and same is decided accordingly against the management.

Issue No. 2 :

The management has examined MW—1 Shri Kailash Chander Manager who stated that the claimant worked in their concern upto 28th June, 1981 and thereafter, he absented himself from duty without any intimation and that the management wrote letters, copies Ex. M—1 and M-2, the postal receipt of which were Ex. M-4 to M-5, but the claimant never joined duty. He further stated that since the claimant did not join duty his services were terminated,—*vide* letter Ex. M-3 and that Ex. M-6 was the postal receipt. He also stated that due to that reason the name of the claimant had been struck off from the rolls. He further stated that the claimant had got a better job with M/s Dabriwala Steel through Shri Lal Singh Contractor and that Ex. M-7 was the certificate issued by the Contractor in that respect. Ex. M-8 is the photostat copy of the attendance register. MW-2 Shri Ashok Kumar Incharge Time Office of M/s Dabriwala Steels, Faridabad stated that the claimant worked as helper in their factory through Shri Lal Singh Contractor from 12th September, 1981 to 16th/17th August, 1982. Ex. M-9 was the statement relating to payments made to the claimant. The testimony of MW-1 Shri Kailash Chander and recitals made in the documents Ex. M-1 to M-6 to show that the claimant absented himself from duty with effect from 28th June, 1981 without obtaining permission/sanction and did not join duty even though the letters dated 4th July, 1981 Ex. M-1 and letter dated 11th July, 1981 Ex. M-2 were sent to him by registered post and his services were terminated on 28th July, 1982,—*vide* letter Ex. M-3 due to his continued absence from duty without permission. The testimony of MW-2 of Shri Ashok Kumar also shows that the claimant remained in service of M/s Dabriwala Steel Faridabad from 12th September, 1981 to 16th August, 1982. Consequently the claimant abandoned the job with the respondent on 28th June, 1981 by remaining absent without permission. The issue is decided accordingly in favour of the management.

Issue No. 3 and 4 :

7. As discussed in issue No 2, above, the name of the claimant was struck off from the rolls by the management because he abandoned his job by remaining absent without permission and as such his services were not terminated, but he had abandoned the job. Consequently the claimant is not entitled to any relief. The award is passed accordingly.

Dated 21st November, 1984.

R.N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 1249, dated the 22nd November, 1984.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.